

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 05-20740-CR-UNGARO-BENAGES

UNITED STATES OF AMERICA

v.

ANTONIO VIDAL PEGO,

Defendant. /

PLEA AGREEMENT

The United States Attorney's Office for the Southern District of Florida and the Environmental Crimes Section of the United States Department of Justice (collectively the "United States" or the "Government") and ANTONIO VIDAL PEGO, (hereinafter referred to as the "defendant") enter into the following plea agreement, pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules of Criminal Procedure:

1. The defendant agrees to plead guilty to Count 4 of the Indictment filed against him, which charges the defendant with a violation of Title 18, United States Code, Sections 1519 and 2, relating to obstruction of justice in a matter within the jurisdiction of the National Oceanic & Atmospheric Administration, National Marine Fisheries Service. The United States agrees to seek dismissal of Counts 1, 2, and 3 of the Indictment, as to this defendant, after sentencing.

2. The defendant is aware that in imposing sentence in his case, the Court is required to consider the Federal Sentencing Guidelines and Policy Statements (hereinafter "Sentencing Guidelines"). Although the Sentencing Guidelines are advisory and not mandatory, the applicable

advisory guidelines will be determined by the Court relying in part on the results of a Pre-Sentence Investigation by the Court's probation office, which investigation will commence after the guilty plea has been entered. The defendant is also aware that, because the Sentencing Guidelines are only advisory, the Court is ordinarily permitted to tailor the ultimate sentence in light of other statutory concerns, and may impose a sentence that is either more severe or less severe than the advisory guideline range. Defendant understands and acknowledges that the Court has the authority to impose any sentence up to the statutory maximum authorized by law for the offense identified in paragraph 1.

3. Defendant also understands and acknowledges that the court may impose a statutory maximum term of imprisonment of up to 20 years, with respect to the charge to which he is pleading guilty, followed by a term of supervised release of up to three years. In addition to a term of imprisonment and supervised release, the court may impose a fine of up to \$250,000 with respect to the charge or up to twice the gross gain or loss for the relevant conduct and may order forfeiture, or restitution to any ascertainable victim of the offense conduct. The defendant further understands and acknowledges that, in addition, a special assessment in the amount of \$100.00 will be imposed on the defendant with respect to the charge. The defendant agrees the special assessment shall be paid at the time of sentencing.

4. The United States and the defendant agree that they will jointly recommend to the Court, pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules of Criminal Procedure, that the

following findings and conclusions would correctly represent the calculation of the applicable advisory Sentencing Guidelines:

- a. Base Offense Level: Pursuant to Section 2J1.2(a) of the Sentencing Guidelines, the base offense level in this matter is Level 14.
 - b. Specific Offense Characteristics: That the offense involved the alteration of an essential or especially probative record pursuant to Section 2J1.2(b)(3), resulting in an increase in offense level of +2 Levels.
 - c. Chapter Three, Part B Adjustment: Defendant should receive neither an increase nor a decrease in offense level pursuant to the provisions of Chapter Three, Part B.
 - d. Overall guideline range: That the applicable guideline range under all of the circumstances of the offense committed by the defendant is Level 16.
5. The United States reserves the right to inform the Court and the Probation Office of all facts pertinent to the sentencing process, including all relevant information concerning the offenses committed, whether charged or not, as well as concerning the defendant and the defendant's background. The defendant understands that the United States may comment on the evidence and circumstances of the case and bring to the Court's attention all facts relevant to sentencing, including facts relating to the offenses and the character of the defendant. The Government further reserves the right to rebut any statement made by or on behalf of the defendant at sentencing. Nothing in this plea agreement shall limit the United States in its comments in, and responses to, post-sentencing actions, appeals, and motions. Subject only to the express terms of this agreement, the United States reserves its right to make a specific recommendation as to the quality and quantity of punishment.
6. The United States agrees that it will recommend that the Court reduce the guideline level applicable to defendant's offense by 3 levels, pursuant to Section 3E1.1(a) of the Sentencing

Guidelines, based upon the defendant's affirmative and timely acceptance of personal responsibility, resulting in an adjusted advisory guideline range of Level 13. Further, the United States agrees that it will recommend to the Court that defendant be sentenced at the low end of the advisory Guideline range. However, the United States will not be required to make these recommendations if the defendant: (1) fails or refuses to make a full, accurate, and complete disclosure to the probation office of the circumstances surrounding the relevant offense conduct; (2) is found to have misrepresented facts to the government after the filing of the Indictment and prior to entering this plea agreement; or (3) commits any misconduct after entering into this plea agreement, including but not limited to committing a state or federal offense, violating any term of release, or making a false statement or misrepresentation to any governmental entity or official; or (4) the Court rejects this plea agreement.

7. In accordance with Federal Rule of Criminal Procedure Rule 11(c)(1)(A) and (B), and the government's Motion pursuant to section 5K1.1 of the advisory Sentencing Guidelines, the United States and defendant agree they will jointly recommend to the Court that the following sentence is appropriate and should be imposed in this case.

A. Probation

A period of probation of four years, which shall include the following special conditions of probation:

1. No Further Violations: Defendant agrees that he shall commit no further violations of federal, state or local law, including smuggling, wildlife, and federal food safety laws and regulations, during the period of probation.

2. Special Assessments: Defendant agrees to pay the \$100.00 mandatory special assessment on the day of sentencing.

3. Termination of Toothfish Harvesting Activities And Interests:

Commencing within 30 days after the imposition of sentence in this case, the defendant shall cease all involvement, direct or indirect, in any aspect of the business of *Dissochitus spp.* fishing, including the harvest, sale, transportation, importation, or export of *Dissochitus spp.*. Defendant shall provide proof to the United States and to the Court's Probation Officer of his divestiture of all interests he may hold at the time of imposition of sentence related to the foregoing activity. This prohibition shall be construed to prohibit defendant from having any employment, management, oversight, or ownership interests of any kind, whether direct or indirect, legal or equitable, in any business that engages in the search for, harvesting, processing, transportation, sale, importation, or exporting of *Dissochitus spp.* during the period of defendant's probation. Defendant specifically understands and agrees that the Court will incorporate this prohibition as a special condition of his probation, and that the Court retains jurisdiction throughout the period of his probation to enforce this agreement. Further, defendant agrees that the Court's Probation Office and the United States Department of Commerce, National Oceanic & Atmospheric Administration, National Marine Fisheries Service (NOAA) may, upon reasonable notice, inspect the books, records, business premises, and activities of the defendant in order to assure his compliance with the terms of this agreement, including requiring the production of such records in the United States, at the Probation Office's and NOAA's discretion, and, if reasonably deemed necessary the personal appearance of defendant in the United States. Expenses related to the personal appearance of the defendant shall be borne by the defendant

only once, unless subsequent required appearances are the result of a negligent or willful act or omission of the defendant.

4. Waiver of Extradition: To facilitate the enforcement of this agreement, if necessary, and to provide for further proceedings that may arise during the period of probation, defendant agrees in exchange for the considerations provided by the United States through this agreement to execute and deliver a waiver of extradition meeting all requirements to be an enforceable agreement under the laws of the United States and Spain, which will allow for the United States to extradite defendant from his country of citizenship, or any third country, during the four year probationary period to be specified by the Court in the Judgment & Commitment Order. Upon receipt of a waiver of extradition consistent with the foregoing requirements, the United States shall return to defendant or join in a motion for the return of any previously extant waivers of extradition.

B. Fine

A criminal fine in a total amount of \$400,000.00, of which \$100,000 shall be due and payable contemporaneous with the imposition of sentence pursuant to this agreement. The parties further agree to recommend that the balance of \$300,000 in criminal fine should be paid by defendant on a schedule of \$75,000.00 per year over the term of probation, the first annual payment to be due on November 1, 2007, and the remaining three payments due on the first day of November of each succeeding year. The parties also agree and request that the Court order the criminal fine be directed through the Clerk, U.S. District Court, to the Magnuson-Stevens Fishery Conservation and Management Act Fund administered by NOAA.

8. The defendant further understands and agrees that by entering into this plea agreement, he voluntarily waives and agrees to waive any and all motions, defenses, objections, or requests which have been made or which could have been made in this case. The defendant waives his constitutional and statutory rights to a speedy trial and trial by jury (or by judge if the defendant is tried by judge alone), and any challenges to the Indictment.

9. The United States acknowledges that the defendant has rendered substantial assistance in the investigation or prosecution of another person who has committed an offense. Pursuant to Section 5K1.1 of the advisory Sentencing Guidelines, the United States agrees to move at the time of sentencing for a departure by the Court from the guideline sentence, and a sentence consistent with the provisions of paragraph 7 of this agreement. The defendant nonetheless understands and acknowledges that the Court is under no obligation to grant a government motion pursuant to Section 5K1.1 of the advisory Sentencing Guidelines. The defendant also understands and acknowledges that the Court is under no obligation to reduce the defendant's sentence because of the defendant's cooperation.

10. Defendant agrees, contemporaneous with the imposition of sentence pursuant to this agreement, to withdraw any and all right, title, interest, or claim to any toothfish, the value of toothfish seized by the United States, or the proceeds from the sale of the toothfish seized by the United States, as well as any and all claims against the United States, the Department of Commerce, the National Oceanic & Atmospheric Administration and its subordinate agencies, the Department of Homeland Security and its subordinate agencies, and the agents and employees of the foregoing federal Departments. Specifically, defendant agrees to withdraw with prejudice any and all claims

in the following civil cases: *United States of America v. Three Hundred And Fourteen Thousand Three Hundred And Ninety-Seven Dollars And Thirty Cents (\$314,397.30) Representing Proceeds From The Sale Of Toothfish (Dissostichus Spp.) And Approximately Five (5) Pounds Of Toothfish (Dissostichus Spp.)*, Case No. 05-20566-CIV-Moore/O'Sullivan [S.D. FL]; *United States of America v. One Million Nine Hundred And Twenty Thousand Seven Hundred And Thirty-Five Dollars And Thirty-Three Cents (\$1,920,735.33) Representing Proceeds From Sale Of Toothfish (Dissostichus Spp.) And Approximately Thirty-Eight (38) Pounds Of Toothfish (Dissostichus Spp.)*, Civil Action No. 05-1238 (ILG)(KAM) [E.D.N.Y.]; *United States of America v. One Hundred Sixty-One Thousand Nine Hundred Thirty-Five Pounds, More or Less, Of Toothfish (Dissostichus Spp.)*, Case No. 05-1539 RSWL (Mcx) [C.D. CA]. Defendant commits to undertake all actions within his power to assist in the forfeiture and transfer to the United States of any right, title, or interest he, or any entity in which he has an interest, has with respect to the funds and toothfish at issue in the foregoing cases.

11. Defendant knowingly and voluntarily agrees to waive any claim or defense he may have under the Eighth Amendment to the United States Constitution, including any claim of excessive fine or penalty with respect to the forfeited asset(s).

12. Provided that the defendant complies fully with the terms of this agreement, the United States agrees to forgo additional criminal prosecution in the Southern District of Florida, the Central District of California, the Eastern District of New York, and the District of Massachusetts against the defendant, for any criminal fisheries related charges in addition to the charges set forth in the Indictment, for any crimes arising out of or relating to that investigation, and that are known

to the government at the time of the signing of this agreement. Further, any statements made by defendant during a proffer pursuant to this agreement will not be used directly or indirectly against him by the government in any federal criminal fisheries related matter that may result from his disclosures during the debriefing. Should defendant willfully provide any false, incomplete or misleading information during the course of the proffer, any statement made by defendant during the proffer may be used in a prosecution of the defendant for other criminal violations including giving a false statement to government agencies and obstruction of justice. The parties further understand that this agreement only applies to federal criminal charges and only to the defendant. Defendant understands and agrees that neither this paragraph nor this agreement limits the authority of any sections or divisions of the Department of Justice, including the U.S. Attorneys of other judicial districts except as provided herein, or any other federal, state, or local regulatory or prosecuting authorities. Although undersigned counsel is unaware of any other criminal investigations or administrative inquiries, this agreement does not provide or promise any waiver of any civil or administrative actions, sanctions, or penalties that may apply, including but not limited to: fines, penalties, suspension, debarment, listing, licensing, injunctive relief, or required remedial action to comply with any applicable regulatory requirement. In the event any enforcement agency or authority institutes such an action after the acceptance of this agreement by the Court, government counsel will bring this agreement to the attention of that entity.

13. The defendant is aware that Title 18, United States Code, Section 3742 would normally afford the defendant the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the undertakings of the United States in this plea agreement, the defendant

hereby waives all rights conferred by Section 3742 to appeal any sentence imposed, including any restitution or forfeiture order, or to appeal the manner in which the sentence was imposed, unless the sentence exceeds the maximum permitted by statute or is the result of an upward departure from the advisory guideline range that the court establishes at sentencing. Subject to the preceding provision, this appeal waiver includes a waiver of the right to appeal the sentence on the ground that under the advisory Sentencing Guidelines range determined by the court, the sentence imposed in this case is not a reasonable sentence. The defendant further understands that nothing in this agreement shall affect the government's right and/or duty to appeal as set forth in Title 18, United States Code, Section 3742(b). However, if the United States appeals the defendant's sentence pursuant to Section 3742(b), the defendant shall be released from the above waiver of appellate rights. By signing this agreement, the defendant acknowledges that he has discussed the appeal waiver set forth in this agreement with his attorneys. The defendant further agrees, together with the United States, to request that the district court enter a specific finding that the defendant's waiver of his right to appeal the sentence imposed in this case was knowing and voluntary.

The United States and defendant also agree not to make any public statements regarding these matters or this agreement prior to the time that the United States files this plea agreement in U.S. District Court for the Southern District of Florida.

14. This is the entire agreement and understanding between the United States and the defendant. None of the terms of this agreement shall be binding on the United States until this agreement is signed by the defendant, counsel for the defendant, and until signed by the United States Attorney's Office for the Southern District of Florida and by the Assistant Attorney General

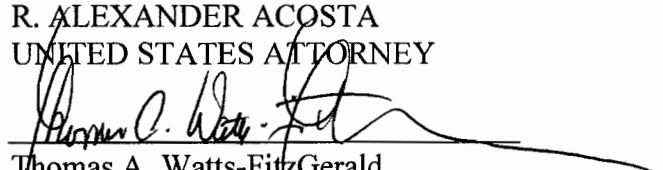
of the Environment and Natural Resources Division, or their designees, and filed in Court. It is understood and agreed that this plea agreement is binding only on the parties to this agreement, supersedes all prior oral or written understandings, if any, whether written or oral, and cannot be modified other than in a writing that is signed by all parties. No other promises or inducements have been or will be made to the defendant in connection with this case, nor have any predictions or threats been made in connection with this plea.

Respectfully submitted,

R. ALEXANDER ACOSTA
UNITED STATES ATTORNEY

Date: 11/12/06

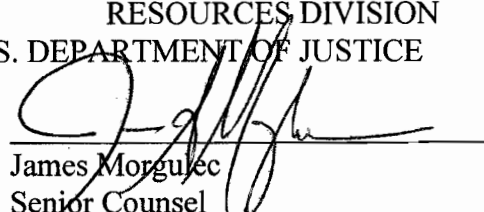
By:


Thomas A. Watts-FitzGerald
Assistant U. S. Attorney

SUE ELLEN WOOLDRIDGE
ASSISTANT ATTORNEY GENERAL
ENVIRONMENT & NATURAL
RESOURCES DIVISION
U.S. DEPARTMENT OF JUSTICE


Date: 11/13/06

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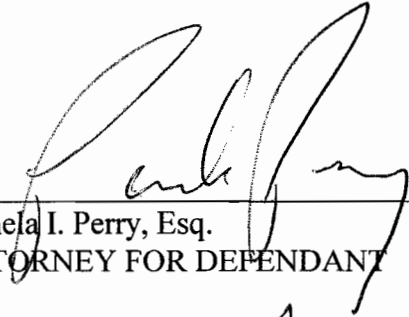

James Morgulec
Senior Counsel
Environmental Crimes Section

We are the attorneys for the defendant, ANTONIO VIDAL PEGO. We have carefully reviewed every part of this agreement with him. To our knowledge, his decision to enter into this agreement is an informed and voluntary one.

Date: 11/3/06


Milton Hirsch, Esq.
ATTORNEY FOR DEFENDANT

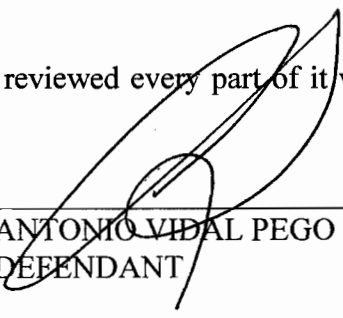
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Pamela I. Perry, Esq.
ATTORNEY FOR DEFENDANT

I have read this agreement and carefully reviewed every part of it with my attorneys. I understand it, and I voluntarily agree to it.

Date: 11/03/2006



ANTONIO VIDAL PEGO
DEFENDANT